IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 6570 of 1998

Shri Ramkrishna Haribhau Shahane .. Petitioner

versus

The State of Maharashtra & ors. .. Respondents

...

Mr.N.V. Bandiwadekar for the petitioner.

Ms.S.S. Bhende, AGP for the respondent no.1.

Mr.R.M. Sawant for the respondent no.2.

CORAM : S.B. MHASE AND

D.G. KARNIK, JJ

DATED : 24th January 2006.

ORAL ORDER (Per D.G. KARNIK, J)

1. Heard the learned counsel appearing for the parties.

2. By this petition, the petitioner seeks a declaration that the petitioner (who has since retired) was entitled to a pay scale of Rs.2200-4000 in the post of Assistant Engineer from 1st April 1986 and thereafter the pay sale of Rs.3200-4625 in the post of a Municipal Engineer from 9th January 1989. The petitioner has further prayed for an order of payment of the difference in the salary on the basis of pay scale as claimed by him in the petition.

3. The respondent no.2 is a Municipal Council. The petitioner was appointed as a sub-overseer in Khopoli Gram Panchayat in the year 1960. After establishment of Khopoli Municipal Council, the petitioner was posted as an overseer under the respondent no.2. The petitioner was promoted to the post of an Assistant Engineer in the pay scale of Rs.660-1150 on 1st April 1977. The petitioner was further promoted as a Municipal Engineer from 9th January 1989 in the pay scale of Rs.700-1610. It appears that soon thereafter the petitioner was reverted back to the post of an Assistant Engineer and some other person was appointed as a Municipal Engineer. The petitioner challenged his reversion by

filing a Writ Petition No.4129 of 1991 in this Court. By an order dated 30th October 1991, this Court allowed the Writ Petition filed by the petitioner and held that petitioner cannot be removed or lowered in his status nor his rights can be impaired except in accordance with the procedure established by law. The Court further held that the petitioner could not be disturbed from the post of Municipal Engineer without any satisfactory reasons and no action could be taken against him entailing adverse civil consequences without sufficient cause. It appears that in view of the said decision of this Court, the petitioner was reinstated and was confirmed in the post of a Municipal Engineer.

4. On 16th February 1996, the respondent no.2 passed a resolution that a pay scale of Rs.3200-100-3500-125-4625, which was the pay scale applicable to the Executive Engineer employed in the Irrigation Department of the Government of Maharashtra, be paid to the petitioner. The said resolution dated 16th February 1996 specifically states that the approval of the State Government should be obtained for the aforesaid pay scale and the said pay scale be granted subject to approval of

the Government. The Director of Municipal Administration purporting to exercise powers of the State Government under section 75(2) of the Maharashtra Municipal Councils (Nagar Panchayats and Industrial Townships) Act 1965 (for short "the Act") declined to grant approval to the pay scale of Rs.3200-4625 as proposed by the respondent no.2 but granted approval to the pay scale of Rs.2000-3500 for the post of a Municipal Engineer. He recorded that the said pay scale of Rs.2000-3500 was already sanctioned and no sanction was granted to the revision as proposed by the respondent no.2. In view of this letter of the Director of Municipal Administration, the respondent no.2 fixed the pay scale of the petitioner in the pay scale of Rs.2000-3500. Learned counsel for the petitioner submits that since the respondent no.2 had passed a resolution approving the pay scale of Rs.3200-4625 for the post of the Municipal Engineer, the petitioner should have been granted the said pay scale and should be paid the difference in the pay scale.

5. Sub-section (1) of section 75 of the Act provides that there shall be a Chief Officer for

every Municipal Council. Sub-section (2) of Section 75 provides that a municipal council may with the sanction of the Director (i.e. Director of Municipal Administration), and if so required by the State Government, shall create all or any of the posts mentioned therein which includes the post of a Municipal Engineer. Sub-section (3) of section 75 provides that subject to the provisions of section 75A, the qualification, pay, allowances and other conditions of service and manner of recruitment of the officers specified in sub-section (1) and (2) shall be regulated by the rules made by the State Government in that behalf. A reading of section 75 of the Act makes it clear that the post of a Municipal Engineer can be created by a Municipal Council only with the previous sanction of the Director or if so required by the State Government. It is competent for the Government to make rules in relation to the qualifications, pay and allowances of a Municipal Engineer who is one of the officers mentioned in sub-section (2) of section 75. The qualifications, pay and allowances and other conditions of service relating to a Municipal Engineer would be governed by the rules to be made by the State Government in this behalf. Learned counsel

for the parties state that at the relevant time no rules were framed by the State Government prescribing either qualifications or pay and allowances and other conditions of service of a Municipal Engineer. If so, qualifications, pay and allowances and other conditions of service of a Municipal Engineer would be governed by executive instructions issued by the State Government from time to time till the rules are framed. The Director of Municipal Administration appears to have been entrusted with the executive powers of the State in this regard. Therefore, in our view, Director of Municipal Administration was competent to fix the qualifications, pay, allowance and other conditions of service of a Municipal Engineer. Accordingly, the Director of Municipal Administration appears to have fixed the pay scale for the post of a Municipal Engineer under the respondent no.2 and has so communicated it to the respondent no.2 Municipal Council by a communication dated 3rd January 1994. There is no dispute that the petitioner has been granted pay scale in accordance with the said pay scale fixed by the Director of Municipal Administration. Hence, the petitioner cannot claim any higher pay scale.

6. Learned counsel for the petitioner submits that Executive Engineers in the Irrigation Department of Government of Maharashtra are granted a higher pay scale of Rs.3200-6425 and invites our attention to the Government Resolution dated 14th December 1995 in that regard. He submits that the respondent no.2 in its meeting held on 16th February 1996 had resolved to grant pay scale of Rs.3200-4625 which was applicable to the Executive Engineer of an Irrigation Department of the Government of Maharashtra to the Municipal Engineer. No material has been placed on record to show what are the duties and functions of an Executive Engineer in an Irrigation Department of the Government of Maharashtra and the duties and functions of a Municipal Engineer in a Municipal Council. Therefore, the pay scale of an Executive Engineer employed in an Irrigation Department of the Government of Maharashtra cannot be granted to a Municipal Engineer. The petitioner or any Municipal Engineer of any municipal council cannot claim a pay scale of an Executive Engineer employed in the irrigation department of the Government of Maharashtra.

7. Learned counsel for the petitioner then

submits that a pay scale of Rs.3000-4500 has been sanctioned for a Municipal Council in Ulhasnagar Municipal Council and the petitioner should therefore be granted atleast the said pay scale. Otherwise there would be a hostile discrimination between a Municipal Engineer in a Khopoli Municipal Council and the Municipal Engineer in Ulhasnagar Municipal Council. In the affidavit in reply filed by Dr.P.S. Meena, Director of Municipal Administration on 27th January 1999, he has clarified that the Ulhasnagar Municipal Council was classified as "A Type" Municipal Council and Khopoli Municipal Council was classified as "B Type" Municipal Council at the relevant time. The classification of the Municipal Councils is made under section 4 of the Act on the basis of population. The Municipal Councils for an urban area with a population of more than one lakh are classified as "A" Class Councils while Municipal Councils in the urban area with population between 40,000 to 1,00,000 are classified as "B" class Councils. B-class Municipal Council are smaller municipal councils. The duties and functions of the Municipal Engineers in such smaller councils would be different. The incomes of the Councils would also be different. Therefore, prescribing of different pay

scales for persons belonging to different classes cannot be said to be a hostile discrimination. The pay scale would necessarily be dependant upon the ability of a Municipal Council to pay such salary which in turn would depend upon the revenue which would depend upon the population. The petitioner therefore, cannot claim parity of pay with the pay of the Municipal Council of the Ulhasnagar.

8. No other point was urged. There is no merit in the petition which is hereby dismissed. In the facts and circumstances of the case, parties shall bear and pay their own costs.

9. Rule discharged with no order as to costs.

(D.G. KARNIK, J) **(S.B. MHASE, J)**